

August 2015

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Recommended Citation

France, James G. (1968) "The Ohio Supreme Court's Traffic Court Rules: A Beginning of Procedural Rule-Making," *Akron Law Review*: Vol. 1 : Iss. 2 , Article 1.

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THE OHIO SUPREME COURT'S TRAFFIC COURT RULES: A BEGINNING OF PROCEDURAL RULE-MAKING

*by Professor James G. France**

Introduction

WITH A SIMPLE one-page announcement on November 14, 1967, the Supreme Court of Ohio assumed not only the power of control, but, in a sense, responsibility for, the operations of one of the most variegated collections of minor courts in the country.¹ The occasion was its adoption of uniform rules of practice in traffic matters² for all courts inferior to the court of common pleas. In so doing it joined a limited group of some eight states,³ led by New Jersey,⁴ which dared to enter a potential quagmire dominated by local politicians, traffic safety zealots, civil libertarians and assorted publicity seekers.

To Ohio and its Supreme Court the adventure had never before appeared particularly inviting. Unlike many of the other jurisdictions asserting this sort of control, the Ohio court had no

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¹ The collection includes not only county courts and municipal courts but police courts (though few now exist) and juvenile courts which administer traffic justice to juvenile traffic offenders. § 2151.021 Ohio Rev. Code (1965). In addition, city and village mayors in communities not the site of municipal courts exercise judicial power over ordinance offenses and certain misdemeanors. § 1905.01 Ohio Rev. Code (1965).

² The rules were first published 40 Ohio Bar 1434 (Dec. 4, 1967). All further mention of the text of the rules is with reference to such publication. Only the title of the rules and those provisions relating to the uniform traffic ticket itself are specifically limited to traffic matters. By contrast, the Illinois rules effective January 1, 1968, relate to "traffic cases, quasi criminal cases, and certain misdemeanors." 230 N.E. 2d xxi.

³ New Jersey (January 1, 1949), Missouri, Arizona, Oregon, Washington, Connecticut, and Illinois preceded Ohio in that order. Similar results have been achieved elsewhere by statute. See Ind. Stat. Ann. § 47-2326 (1965).

⁴ The New Jersey rules were used as the principal basis of the Missouri rules and those of all other states except Ohio, and to some extent, Illinois. They were also extensively relied on by the National Conference of Commissioners on Uniform State Laws in drafting Model Rules Governing Procedure in Traffic Cases (1957).

background of experience in imposing administrative or procedural controls on its courts of general jurisdiction.⁵ It had only one dead-letter regulation which purported to regulate continuances for trial⁶—a provision almost universally ignored by Ohio's common pleas judges. In fact less than a week before adopting the rules it had ratified the power of individual common pleas courts to impose their own separate rules, creating severe restrictions on the constitutional right to jury trial.⁷

Not only the Court, but the whole framework of Ohio law and practice seemed barren of assertion of court leadership in balancing the competing demands of traffic safety, increased police activity, heavy trial dockets, and the rising tide of civil libertarianism. Ohio has been conspicuously a "loner" and part of a small minority in many legal fields, particularly in court administration, procedure and jurisdiction.⁸ It has clung tenaciously to

⁵ Creation of the rule-making power has been the subject of desultory efforts by the Ohio State Bar Association, primarily in the last ten years, as part of a modern courts proposal to amend Ohio's constitution. The current proposal, well watered-down before passage in the House of Representatives, awaits voters' action at the primary election in May, 1968, when it will appear on the ballot as a proposed constitutional amendment. The sole administrative control now exercised is that of assigning less occupied judges from rural courts to sit in metropolitan counties or in courts where single judges are disqualified, a power exercised by the Chief Justice and always on a consensual basis.

⁶ Supreme Court Rule XXV (1957) 167 Ohio St. LXXVi, not readopted in 1964, 176 Ohio St. LXIV.

⁷ *Cassiday v. Glossip*, 12 Ohio St. 2d 17, 231 N.E. 2d 64 (1967).

⁸ In administration, the Court's statistical service is rudimentary. It gives input, output, and pending case load figures, but makes no effort, as it once did, to estimate the age of cases pending on the dockets of the trial courts, nor does it attempt to suggest any measures for reform. Even compulsory pre-trial as an aid to disposition is not particularly encouraged. See *Bognar v. Cleveland Quarries Co.*, 7 Ohio App. 2d 187, 219 N.E. 2d 827 (1966).

Of particular note are two comparatively recent Supreme Court decisions relating to service and joinder. In *Huggins v. Morell*, 176 Ohio St. 171, 198 N.E. 2d 448 (1964), it virtually emasculated a then recent liberal joinder of causes of action provision (§ 2309.05 (1959)) by applying to it a restrictive joinder of parties provision (§ 2309.06 (1953)). The legislature promptly responded by repealing the latter statute. Still later, in *Henderson v. Ryan*, 13 Ohio St. 2d 31 (1967), the dissent argued that repeal of the old party joinder section was unnecessary to achieve a liberal result. In *Hudzik v. Alcorn*, 4 Ohio St. 2d 45, 212 N.E. 2d 419 (1965), a unanimous court refused to apply any theory of estoppel to claim defective service on a minor where the minor defendant's counsel, after pleading to a tort claim and participating in pre-trial activities, withheld objections to the service and disclosure of minority until after the statute of limitations had run. The legislature promptly responded by authorizing service on a minor as if an adult in such tort claims (§ 2703.131 Ohio Rev. Code (1965)) and for good measure required prompt disclosure of minority status by a defendant in all suits. (§ 2309.261). The Court has not since found occasion to pass on whether such legislation was necessary.

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its Field Code of civil procedure while other states have turned to procedural rule-making; it has fought court control of discovery at every turn;⁹ it is one of an extremely limited minority which still attaches the consequences of jurisdictional failure to a simple invoking of the wrong venue.¹⁰ Even in the matter of the presumption of order of death it is one of only four states to refuse to adopt a simple uniform act recommended by the Commissioners on Uniform State Laws.¹¹ In view of the preceding, for what reasons would the Ohio Supreme Court take such an unprecedented step?

The answer is believed to lie partly in the attitude of the Court toward police administrative problems, partly in its desire to make something of a case for a pending modern-courts constitutional amendment¹² which confers on it similar rule-making powers over other courts;¹³ and partly in the manner of the presentation of the proposed rules to the Court.

As to the first of these reasons, the Ohio Supreme Court can be characterized as extremely sensitive and responsive to the police position on civil liberties. Many may have forgotten it, but in the wake of the *Boyd*¹⁴ and *Weeks*¹⁵ decisions the Ohio Court

⁹ *In re Martin*, 141 Ohio St. 87, 47 N.E.2d 388 (1943); *In re Frye*, 155 Ohio St. 345, 98 N.E.2d 798 (1951); *Ex parte Oliver*, 173 Ohio St. 125, 180 N.E.2d 599 (1962). *Mobberly v. Sears Roebuck*, 4 Ohio App.2d 126, 211 N.E.2d 839 (1965).

The tide seems belatedly to be turning. See *State ex rel. Staton v. Common Pleas Court*, 5 Ohio St. 2d 17, 213 N.E. 2d 164 (1965); *State ex rel. Jackman v. Court of Common Pleas*, 9 Ohio St. 2d 159, 224 N.E.2d 906 (1967). *State v. White*, 9 Ohio App. 2d 271, 221 N.E.2d 722 (1966); *State v. Hill*, 12 Ohio St. 2d 88 (1967); *Evans v. Grange Mut. Cas. Co.*, 12 Ohio Misc. 108 (1967).

¹⁰ The classic example is *Bucurenciu v. Ramba*, 117 Ohio St. 546, 159 N.E. 561 (1927); followed in *Glass v. McCullough Transfer Co.*, 159 Ohio St. 505, 112 N.E.2d 823 (1953).

¹¹ Report of Probate and Trust Law Committee, Ohio State Bar Ass'n, 40 Ohio Bar 1302 (1967).

¹² See constitutional amendment, *supra* note 5.

¹³ In France, *Judicial Reorganization—A Solution to Congestion?*, 68 Dick. L. Rev. 143, 151 (1964), the author indicated that lack of desire to promulgate traffic court rules indicated equal indisposition to face up to the challenge of rule-making for courts of general jurisdiction and predicted that "[t]he Supreme Court of Ohio will scarcely be bursting with enthusiasm to assert any effective degree of control over the practices of trial courts." Even assuming the correctness of such a prophecy, it is suggested that the Court could scarcely leave unused for a period of more than seven years a legislatively-conferred rule making power over minor courts while the organized bar of the state was contending strenuously that nothing but the grant of rule-making power over all courts would prevent undue congestion.

¹⁴ 116 U.S. 616, 6 S. Ct. 534 (1886).

¹⁵ 232 U.S. 383, 34 S. Ct. 341 (1914).

in the early 1930's had a brief honeymoon with the exclusionary rule.¹⁶ But in 1936 in an opinion written by one of the present judges and dealing with terrorist bombings in Cleveland, it abruptly abandoned the rule¹⁷ and relegated the victims of an admittedly illegal and highhanded search to their civil remedies against the searching officers. When the United States Supreme Court in *Wolf v. Colorado*¹⁸ delivered what many other state courts interpreted and followed as a broad hint to adopt the exclusionary rule of their own volition,¹⁹ the Ohio court quoted it as giving a guarantee that the U.S. Constitution did not require state courts to impose the rule.²⁰ It was, as a matter of history, reversed in the very case in which it had chosen to make the statement,²¹ and this was the first of the long parade of *Mapp*,²² *Beck*,²³ *McLeod*²⁴ and *O'Connor*.²⁵ In each successive case the Ohio court, with increasing defensiveness, supported the police position, using factual distinctions and procedural niceties,²⁶ and

¹⁶ *Nicholas v. City of Cleveland*, 125 Ohio St. 474, 182 N.E. 26 (1932); *Browning v. City of Cleveland*, 126 Ohio St. 285, 185 N.E. 55 (1933).

¹⁷ *State v. Lindway*, 131 Ohio St. 166, 2 N.E.2d 490 (1936).

¹⁸ 338 U.S. 25, 69 S. Ct. 1359 (1949).

¹⁹ In recounting the history and effect of the *Wolf* pronouncement the Court's opinion in *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684 (1961), points out, in 367 U.S. at 651:

"While in 1949, prior to the *Wolf* case, almost two-thirds of the States were opposed to the use of the exclusionary rule, now, despite the *Wolf* case, more than half of those since passing upon it, by their own legislature or judicial decision, have wholly or partly adopted or adhered to the *Weeks* rule. . . . The experience of California that such other remedies have been worthless and futile is buttressed by the experience of other states. The obvious futility of relegating the Fourth Amendment to the protection of other remedies has, moreover, been recognized by this court since *Wolf*. . . ."

²⁰ *State v. Mapp*, 170 Ohio St. 427, 166 N.E.2d 387 (1960).

²¹ *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684 (1961).

²² 67 U.S. 643, 81 S. Ct. 1684 (1961).

²³ *Beck v. Ohio*, 379 U.S. 89, 85 S. Ct. 223 (1963), reversing *State v. Beck*, 175 Ohio St. 73, 191 N.E.2d 825 (1963).

²⁴ *McLeod v. Ohio*, 381 U.S. 356, 85 S. Ct. 156 (1965), reversing *State v. McLeod*, 1 Ohio St. 2d 60, 203 N.E.2d 349 (1964).

²⁵ *O'Connor v. Ohio*, 385 U.S. 92, 87 S. Ct. 257 (1966), reversing *State v. O'Connor*, 6 Ohio St. 2d 169, 217 N.E.2d 685 (1966).

²⁶ In *McLeod*, remanded to the Ohio Supreme Court "for consideration in the light of *Massiah v. United States*," the majority of the latter court elaborately distinguished the *Massiah* case, and others, on their facts. A dissent by Gibson, J., 1 Ohio St. 2d at 63 pointed out that a prior case, *Doughty v. Sacks, Warden*, 372 U.S. 781 (1962), had been previously remanded for fur-

(Continued on next page)

with increasing curtness the U.S. Supreme Court undermined the police position, brushing aside the procedural niceties.²⁷ The positions assumed by the two courts were as nearly polar as the two courts could make them.

In the middle of this sensitive and police-supporting atmosphere, chronologically between the opinions in *State v. Mapp*²⁸ and *Mapp v. Ohio*,²⁹ the first committee appointed to draft uniform rules presented its report. The report drew objections primarily from police departments, including the Cleveland police. Both in brief and in oral argument in support of a motion to adopt the rules, the committee made some rather tart observations concerning the Cleveland police department and traffic ticket fixing scandals in Cleveland.³⁰ The answer of the court was to deny the motion for adoption, reorganize the committee by adding police chief representatives, and direct the reorganized committee to restudy the matter.³¹ This the committee did. It resubmitted a report with minor modifications and some of the police representatives still in dissent. The report was received by the Court shortly after the decision in *Mapp v. Ohio* was announced.³² For six months the Court maintained a complete silence on the new report. The committee chairman then submitted his resignation and almost immediately the court declined to adopt the rules "at this time," giving as its reason "lack of unanimity among police agencies."³³

(Continued from preceding page)

ther consideration in the light of *Gideon v. Wainwright*, that the Ohio court had adhered to its previous position, and had been summarily reversed. It predicted, correctly, that the majority would be summarily reversed in *McLeod*. In *O'Connor*, remanded "for further proceedings in light of *Griffin v. California*," the majority of the Ohio Court attempted procedural distinctions. The dissent by O'Neill, 6 Ohio St. 2d at 176 correctly predicted from the *Doughty* and *McLeod* experiences another summary reversal.

²⁷ In contrast to *Mapp* and *Beck*, the reversing opinion of the United States Supreme Court in *McLeod* was exactly one sentence long and that in *O'Connor* less than a page.

²⁸ 170 Ohio St. 427, 166 N.E.2d 387 (1960).

²⁹ 367 U.S. 643, 81 S. Ct. 1684 (1960).

³⁰ Reply Memorandum of Committee at 3, 5, *In the Matter of Uniform Rules of Criminal Practice in Minor Courts*, Ohio Supreme Court, unreported. An even more serious scandal erupted in Cleveland in May, 1962, precipitated by activities of a newspaper reporter. *Cleveland Plain Dealer*, May 29, 30, 31, June 5, 1962; editorial June 2, 1962.

³¹ Journal Entry, February 1961, *supra*, n. 30.

³² *Mapp v. Ohio* was announced June 19, 1961. The second committee report, which showed no police dissent, was forwarded to the court in July, 1961.

³³ Journal Entry, February 14, 1962, *supra*, n. 30.

During the following four years the committee merely marked time. Then the State Highway patrol, formerly opposed to the uniform traffic ticket, changed its attitude and adopted the ticket for use in its own operations.³⁴ After extensive conferences, first the Toledo and Cleveland, then the Dayton, and finally the Columbus and Cincinnati police departments, securing slight modifications of the ticket, announced their willingness to accept it. Police unanimity, the lack of which was the ostensible basis of the Court's previous adverse decision, had been secured!

But it was not merely police dislike of the uniform ticket which had to mellow; an apparent civil libertarian and anti-police bias was, at least to some, discernible both in the statutory amendments which authorized the ticket and the rules, and in the original composition of the committee charged with the drafting of the rules themselves. Not only were the statutory amendments themselves given publication in advance of passage,³⁵ with observations and comments which could be construed to reflect on police, but some rather advanced (for their day) provisions on right to counsel and prompt arraignment or release of the accused were introduced,³⁶ which seemed to run counter to the police position on such matters. The chairman of the rules-drafting committee had been the draftsman of both the original civil libertarian amendments and the committee's brief in favor of the rules. This brief at first submission dwelt, perhaps unkindly, on the Cleveland police department ticket fixing scan-

³⁴ Use of the ticket on a state wide basis commenced January 1, 1967.

³⁵ Draftsman's comments, as well as text of the proposed amendments, are contained in Report of Criminal Law Committee, Ohio State Bar Ass'n., 31 *Ohio Bar* 417, May 12, 1958.

³⁶ Principal changes introduced by the amendments (123 Ohio Laws 97) were: requirement that a person arrested under warrant must be taken forthwith before a magistrate, or if a magistrate is not available, admitted to bail, § 2935.13 Ohio Rev. Code (1965); requirement that the jailor make available to a prisoner facilities to communicate with an attorney or other person able to provide him with counsel or bail, with criminal penalty provided against the jailor, § 2935.14; right of roving inquiry on part of magistrates with relation to uncharged prisoners "whenever it comes to the attention" instead of waiting for the filing of writ of habeas corpus, § 2935.16; requirement that the magistrate inform the accused at first appearance of right, not only to counsel, but to continuance to secure counsel, and of not only the nature of the charge, but the identity of his accuser, § 2937.02; provision that delay in preliminary hearing for more than ten days in a felony case is grounds for discharge forthwith, § 2937.21, and a similar provision for trial of misdemeanors within thirty days, § 2938.03.

dal.³⁷ By the time of the second submission of the rules *Mapp v. Ohio*³⁸ had just been reported. Before the second report was considered the committee chairman, then a common pleas judge, applied what appeared to be (to him) *Mapp's* logical implications to set aside a lineup identification in a Cleveland police department case,³⁹ thus anticipating the *Wade*⁴⁰ rule by more than five years. This was hardly the time to *extend* the *Mapp* rule in Ohio, and it is scarcely surprising that that particular judge was never again assigned to sit in Cleveland as a trial judge. His resignation as committee chairman took place shortly thereafter.

But by 1967, the novelty of the civil libertarians' position had worn thin. *Beck*,⁴¹ *McLeod*⁴² and *O'Connor*⁴³ came and went. Even in *State v. Terry*⁴⁴ the Ohio Court failed to find a substantial constitutional question, letting it go to the Supreme Court of the United States as *Terry v. Ohio*.⁴⁵ No more arguments between the committee and the police departments occurred in open court, for the report in 1967, in contrast to the first two presentations, was received *in camera*. Great care was taken in the transmittal of the rules to suggest that their whole purpose was not to control police action, but to give the police a firmer hand and more power in controlling the activities of the traffic violator, if not the courts in which both police and violator appeared. The rest is history.

The Ticket

The most controversial and hard fought of the new rules is the Uniform Traffic Ticket, as provided for in Rule .14 and the form supplement. It bears a high degree of surface resemblance to the much-publicized American Bar Association Uniform Traffic

³⁷ See n. 27 *supra*. The fact that the comments, Reply Memorandum at 4, were made in reply to an ill-timed boast by Cleveland's Safety Director that the Cleveland tickets had stood the test of time and enjoyed freedom from complaint probably did not help.

³⁸ 367 U.S. 643, 81 S. Ct. 1684 (1960).

³⁹ *State v. Miller*, unreported, #74750 Cuyahoga County Common Pleas Ct. November, 1961.

⁴⁰ *United States v. Wade*, 388 U.S. 218, 87 S. Ct. 1926 (1967).

⁴¹ 379 U.S. 89, 85 S. Ct. 223 (1964).

⁴² 381 U.S. 356, 85 S. Ct. 156 (1964).

⁴³ 385 U.S. 92, 87 S. Ct. 257 (1966).

⁴⁴ 5 Ohio App. 2d 122, 214 N.E.2d 114 (1966).

⁴⁵ 387 U.S. 929, 87 S. Ct. 2050, 18 L.Ed. 989 (May 29, 1967). The case has already been argued on the merits. 36 *U.S. Law Week* 3245 (1968).

Complaint, in official use in New Jersey, Missouri, Oregon, Washington, Illinois, Indiana, Connecticut, and parts of Florida, and in unofficial use in Michigan and other states. Its four pre-carboned or pressure sensitized pages, sized 4¼ by 8½ inches, have basically the same distribution: one copy to the court to serve as a charging document, one copy, endorsed by the court after conviction, to serve as a report to the state licensing authority; one copy as a police record; and one to be given to the violator to serve in lieu of a court summons. The face of all pages is essentially the same.

But a detailed examination of the ticket adopted by the Supreme Court reveals many points of departure from the American Bar Association model. The Ohio ticket does contain, like the model, a series of ruled blocks, with legends beside them, for indicating by check mark or "x" in each block a specific moving traffic violation "plainly but tersely" described in accordance with statute. Authority for this type of ticket affidavit was thoughtfully provided by the legislature in 1959 at the same time as it provided authority for the rules themselves.⁴⁶ Provision is also made for description in the ticket of the conditions of road, weather and traffic, also by the "check-the-proper-blocks" technique.

But it is at this point that all similarity to the American Bar Association ticket complaint ends, both because of different statutory conditions and a different climate of opinion in Ohio. The American Bar offering, based on the Uniform Vehicle Code, purports to put into block form some six common traffic offenses: speeding, improper left turns, improper right turns, stop sign and traffic light violations, and passing and lane usage violations. Each of the six groups of offenses is arranged in three gradations of seriousness, in ascending order from left to right. The blocks outlining the conditions of weather, traffic, and road are similarly increased in seriousness of condition from left to right. The whole system is designed so that a traffic judge can mentally determine the amount of the fine by looking at the position of the various check marks on the ticket form itself.⁴⁷

⁴⁶ Provision for the rules generally is contained in § 2937.46 Ohio Rev. Code (1965). The ticket authority is spelled out more precisely in § 2935.17.

⁴⁷ The standard American Bar Association ticket is published in Model Rules governing Procedure in Traffic Cases, National Conference of Commissioners on Uniform State Laws, 1957. For explanation of automatic fine determination from placement of check marks, see M. Halsey, *Judge and Prosecutor in Traffic Court* 318 (1951).

The Ohio ticket designers were confronted with the need for radical departure from such a system. In the first place, Ohio's maverick Uniform Traffic Code (uniform only for Ohio) has little resemblance to the generally adopted Uniform Vehicle Code. A "reasonable and proper"⁴⁸ speed law with *prima facie* limits does not lend itself to charges that a driver is speeding 5-10, 11-15, or over 15 miles per hour "over limit" as inscribed in the American Bar complaint. Similarly since Ohio law provides that a person entering an intersection on a green (or yellow) traffic light is not in violation of law⁴⁹ if the light changes after he has entered, it makes no difference where within the intersection he is when the light turns red. The American Bar complaint's description of "cutting corner" as one of the gradations of a turning offense likewise did not seem consonant with Ohio's Uniform Traffic Act.⁵⁰

Apart from such difficulties, the guide to purely mechanical fine calculation implied in traffic ticket design was not particularly enticing to the Ohio committee. As a result they abandoned the effort to limit use of the ticket to only six basic offenses in gradations of seriousness and by judicious use of related offenses in the three columns of blocks in the Ohio ticket form they managed to describe, in terse printing beside the blocks, some twenty-four more or less separate moving traffic violations, including violation of Ohio's dubiously described reckless operation statute.⁵¹ Similarly, any effort at arranging street and highway conditions in ascending order of seriousness was written off in the

⁴⁸ § 4511.21 Ohio Rev. Code (1965).

⁴⁹ *Springfield v. Stovall*, 117 Ohio App. 203, 192 N.E.2d 72 (1962); *Case v. Carter*, 103 Ohio App. 11, 142 N.E.2d 670 (1956).

⁵⁰ In their wording § 4511.36(B) Ohio Rev. Code and § 11-601(b) of the Uniform Vehicle Code are identical, specifying that the vehicle shall be right of center both entering and leaving the intersection on a left turn and that "whenever practicable the left turn shall be made in that portion of the intersection to the left of center of the intersection." The decision in *Gratziano v. Grady*, 83 Ohio App. 265, 78 N.E.2d 767 (1948) throws doubt on whether the term "cutting corner" would state an offense under Ohio law.

⁵¹ Ohio traffic judges have frequently described the language of § 4511.20 Ohio Rev. Code (1965) as being nothing more than a recitation of actionable civil negligence with a built-in contributory negligence defense, since it charges operating "without due regard to the safety and rights of . . . so as to endanger the life, limb or property of any person while in lawful use of the streets or highways."

In the 1967 legislature a degree of liberality in the definition was achieved by deleting the requirement that the things and persons endangered must be "in the lawful use" of streets and highways, the provision that invited the contributory negligence defense. 132 Ohio Laws § 179.

Ohio ticket. For small town and rural courts, the various weather, road and traffic conditions may still be checked off. But option is given to the larger communities, where fixed fines are normally imposed in traffic violations bureaus,⁵² to eliminate these conditions blocks altogether and to substitute a place for the traffic judge to note sentence on plea of guilty, or such other matter as the local court finds desirable.

One difference, not immediately apparent, between the American Bar ticket complaint and the Ohio adaptation lies in the form of jurat used. In many of the American Bar complaint jurisdictions, notably Michigan, an information and belief affidavit is sufficient to charge crime—or at least a traffic offense—and the jurat is so drawn. Ohio, on the other hand, has a strict rule that the affidavit, to constitute a valid charge, must be sworn to positively.⁵³ Use of the American Bar Association complaint form by some Ohio courts in the past has resulted in reversal of conviction.⁵⁴ Enforced use of the new Ohio prescribed ticket is likely to pay a small dividend in eliminating the uncritical use of defective jurats, designed for other jurisdictions.

The principal benefits of enforced use of a standard ticket form will come from the uniform plain but terse phrases used to describe the offenses themselves. Some of the descriptive phrases used admittedly are not models of the best possible grammar, and in the prescribed ticket there is an almost breathless change from the use of the nouns "speed" and "improper turn" to past participles, "failed," to present participles "following" and "endangering." But with the possible exception of the phrases "cut in" and "cut out," used in the passing offenses and lane usage category, all 24 offenses tersely described in Ohio's ticket appear

⁵² Both the time of institution and the number of offenses which are violations bureau-disposable varies from city to city, but all five of Ohio's largest city courts now use a traffic violations bureau for moving violations. Columbus and Cincinnati have both the earliest and most widespread use, that in Columbus not being confined to traffic matters but including some offenses of a police court character. Akron did not institute such a violations bureau for moving offenses under court control until 1967.

⁵³ Informal opinion of Attorney General No. 50, January 6, 1958, unpublished, but issued to Director, Ohio Department of Highway Safety, citing *Pope v. Cincinnati*, 3 Ohio Cir. Ct. 497, 2 Ohio Cir. Dec. 285 (1888); *United States v. Carter*, 14 Weekly Law Bull. 191, 5 Ohio Fed. Dec. 592 (1887). See also *Miller v. State*, 2 Ohio L. Abs. 488 (1924); *State v. Gutilla*, 59 Ohio L. Abs. 289 (1950).

⁵⁴ *City of Willoughby v. Hugebeck*, 2 Ohio App. 2d 36, 206 N.E.2d 234 (1964); *City of South Euclid v. Clapacs*, 6 Ohio Misc. 101, 213 N.E.2d 828 (1966).

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to be readily understandable to a driver. They appear to be a distinct improvement on police-jargon coded descriptions now frequently used by traffic officers in hand written citations. "Fail con," "grasshop," "zig-zag," "tail gate," and "blasting," may mean much to a police officer writing a traffic citation, but it is unlikely that they mean anything at all to a middle aged or female driver. Yet the defendant is supposed to be informed of the nature of the charge when the citation is issued on the street to him!⁵⁵

While police reluctance to use a standardized ticket was the chief stumbling block to an earlier adoption of the uniform rules, other effects of their adoption are likely to be much more far reaching in altering administrative and procedural practices in the various minor courts. The changes made may be grouped under four heads: Those regulating official conduct of judges and court officials; those emphasizing previously ignored statutory criminal procedures; those imposing new procedures; and those governing the conditions of ticket issuance and disposition.

Conduct of Judges and Officials

Most important of the rules regulating official conduct is Rule .05, which makes the canons of judicial ethics applicable to any judge, whether or not he is admitted to the bar. Combined with this is Rule .04, which specifically imposes all the obligations of a judge on any mayor who holds court. Even the most liberal application of Canon No. 13 will compel many mayors to think twice before sitting on cases in which their relatives, creditors, and landlords are defendants or complaining witnesses, a circumstance which has not bothered some mayors in the past. Whether the presence of the canons will give rise to a suspicion in many mayors' minds that there may be a conflict of interest in serving, simultaneously, as head of the law enforcement arm of his community and as arbiter between that arm and the private citizens against which it files complaints is another question.⁵⁶ Many mayors are rather insensitive to the bad public relations of the first situation and completely oblivious to any ethical problems raised by the second.

⁵⁵ § 2935.17 Ohio Rev. Code.

⁵⁶ Section 733.03 in cities and § 733.24 in villages makes the mayor of the community the chief conservator of the peace. In cities he appoints the safety director, who is responsible for the police department. § 737.01 Ohio Rev. Code. In villages the appointment and control of the chief of police is the mayor's responsibility. § 737.15 Revised Code.

It is not to be expected that the mere imposition of the rules will reform mayors' courts overnight so far as conflict of interest problems are concerned. For there is no machinery other than the appeal in individual cases to afford redress. No direct removal machinery is available, and the disbarment-quo warranto technique used so successfully in the case of a municipal judge⁵⁷ is obviously ineffective against a county judge or mayor who does not have to be an attorney to hold his office.⁵⁸ It is true that the remedy of contempt of the Supreme Court is possible, but the limitations imposed by the Court on enforcement procedure by contempt⁵⁹ make it unlikely that contempt charges against judges and mayors will be often invoked.

Of far more concern than the mayor's conduct in small communities is the rather widespread use in metropolitan communities of the plea of guilty and payment of fine by proxy. The proxy system, used primarily by the business elements of the community, consists of delivery of the recently received ticket or citation to an agent with some standing or influence with a judge, who then avoids appearance in open court but, instead, seeks out the judge in chambers. In the absence of prosecutor or police the agent enters a plea of guilty on behalf of his principal, has fine or other disposition imposed, and all without troubling his principal with the bother of appearing in court.⁶⁰ In some communities the agent may be a bail bondsman, in others the defendant's councilman, but in most cases the agent is an attorney who either charges the principal a fee for legal services rendered or, more

⁵⁷ Rather than attempt to remove a Youngstown judge directly, the Bar Association first procured his disbarment for misconduct as a lawyer, committed while a judge. *Mahoning County Bar Ass'n. v. Franko*, 168 Ohio St. 17, 151 N.E.2d 17 (1958), cert. den. 358 U.S. 932, 795 ch. 312 (1958). The attorney general of the state then brought quo warranto proceedings to compel him to vacate the office on the ground that he must be a lawyer to hold his judicial position under § 1901.06 Ohio Rev. Code (1965). *State ex rel. Sazbe v. Franko*, 168 Ohio St. 338, 154 N.E.2d 751 (1958).

⁵⁸ While a county judge was required to be admitted to the practice of law, commencing January 1, 1963, a grandfather clause permits non-lawyer judges as of that date to continue to hold and run for the office. § 1907.051 Rev. Code.

⁵⁹ Rule .06 provides: ". . . No proceeding in contempt under this rule may be instituted except by leave of the Supreme Court of Ohio first obtained, or on the application of the Review Commission hereinafter established."

⁶⁰ It is, of course, the appearance of the defendant in court, and the time spent there, apart from any lecture he receives, that constitutes the real penalty to the affluent class. It is also a greater equalizer of penalty, since a ten dollar fine may represent a real hardship to a marginal hourly worker and none whatsoever to the executive.

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often, performs the function as a service accommodation for the executives of his corporate clients. The practitioners of the art of conviction by proxy see no imputation of ticket fixing in such conduct. In fact the lawyers involved proclaim the practice as constitutionally validated under "the right of the defendant to appear by counsel," forgetting that the right is one to appear "with counsel" and to appear in open court at that.

The rules of practice recommended by the Commissioners of Uniform State Laws appear to handle the problem most directly by simply providing that the defendant must be present at imposition of sentence in all traffic cases, except those which are violations-bureau eligible.⁶¹ The new Ohio rules are somewhat more explicit, but also conspicuously leave a loophole. Rule .19 expressly forbids the receipt of a plea of guilty except by personal appearance in open court or *actual* disposition at violations bureau, thus eliminating the chambers treatment of cases eligible for, but not actually processed in, the violations bureau. But the rule also creates an escape hatch by authorizing the court to make other disposition upon separate application by the defendant in writing.⁶² Whether many lawyers will take advantage of such a device, and whether judges will care to spread on the records of the court that treatment other than in open court was had by a certain defendant remains to be seen. In addition there is the problem common to all the new rules: How will they be enforced? In any event the rule places in the hands of attorneys a graceful way to bow out of the practice of "taking care of" traffic tickets for regular clients, by pointing to the prohibitions of the rule. Since many lawyers regard the business of disposing of their client's traffic tickets as something less than the practice of law and feel that they are forced into it by the huckstering practices of bail bondsmen and others, possibly enforcement will not be needed to secure compliance with the rule.

Aid in Applying Statutory Procedures

An area in which the new Ohio rules may be exceedingly helpful is in directing attention of the minor court judges and mayors to the existence of substantial recent changes in criminal

⁶¹ Rule 1:3-5 based on New Jersey Rule 8:10-7.

⁶² "No plea of guilty shall be received by the court other than by personal appearance of the defendant in open court or disposition in accordance with Rule .18 at a regularly established violations bureau, except with the consent of the court upon separate application in writing." Rule .19.

procedure. Many of these new procedures have been ignored by segments of the bar and judiciary for the eight years they have now been in effect. The very fact that the rules themselves are declared to be promulgated under authority of two sections of the revised code passed as part of this same general revision may be helpful in directing attention of the practicing bar to pocket parts supplements to the criminal procedure act long overlooked. The existence of a statutory, apart from a constitutional, obligation of the magistrate to inform a defendant of right to counsel was apparently completely overlooked by counsel and the trial court in *Toledo v. Frazier*⁶³ and similar cases. Similarly the fact that most special pleas in magistrate's court were abolished by statute and that motion practice similar to that of the Federal Rules of Criminal Procedure⁶⁴ was substituted seem to have been generally overlooked. Attorneys are still filing and arguing, and judges are still hearing and deciding demurrers to affidavits and pleas in abatement, notwithstanding their statutory abolition, as a number of reported cases bear witness. It is, perhaps, only disturbing to the purist to label what should be a motion to dismiss as a demurrer or a plea in abatement, since the same purpose is served by the one as by the other. But there has been a discernible tendency to prolong proceedings by offering, first motions, then demurrers, then pleas in abatement, all at successive sessions of the court.

An additional reminder of statutory requirements is contained in Rule .18(f) relating to referees. Long continuance of traffic cases, as well as other misdemeanor cases, for trial is not calculated to engender respect for the court system. Yet sometimes these contested cases are long continued, notwithstanding the provisions of § 2938.03 Ohio Rev. Code. This statute requires trial within thirty days and was passed for the express purpose of eliminating long continuances for trial. The ostensible, and frequently actual, reason for such illegal continuances is the unavailability of traffic and criminal courtrooms and judges, the tradition being that no matter how many judges there may be on a multi-judge bench, all but two have to be occupied on the civil side. Rule .18(f) suggests, without commanding, that the statute means what it says and that, if necessary to comply with the thirty-day rule, referees should be appointed to expedite trials.

⁶³ 10 Ohio App. 2d 51, 226 N.E.2d 777 (1967).

⁶⁴ See § 2937.04 Ohio Rev. Code (1965) and Rule 12, Federal Rules of Criminal Procedure.

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Recognizing both the mistake in nomenclature and the delay problem, the Court, in Rule .11, declares that motions to form (previously ignored in the Criminal Procedure Act) as well as motions to substance, specified in § 2937.04 Ohio Rev. Code, must be presented before plea.⁶⁵ It then goes on to specify that all motions "where possible" shall be made at the same time to avoid delay.⁶⁶ It might have been helpful to provide, as does Rule 12(b) of the Federal Rules of Civil Procedure, that the filing of inconsistent motions does not constitute a waiver of any one of them.⁶⁷

On the general subject of waiver the rules underline and draw attention to another ignored provision of the Criminal Procedure Act amendments of 1959. Section 2937.06 Ohio Rev. Code provides that entry of plea to the charge shall constitute a waiver of any objection which could be taken advantage of by motion. Understandably such a rule is not applied strictly when a defendant does not engage counsel until after his plea. But it also has been ignored in cases in which counsel was retained and simply did not bother to examine the charge until preparing for trial. The result has been that frequently affidavits have been frequently altered on the eve of or during trial to meet objections which were raisable earlier had counsel bothered to examine the charge before plea. The new rules, without adopting the statutory provision, draw attention to it by the statement in Rule .17(e) that entry of plea of not guilty by mail or by attorney, shall constitute a waiver of all motions "as fully as would a plea entered in person in open court."

The so-called "immediate trial" provisions of Rules 10 and 17(e) represent an attempt to clarify a murky area of Ohio's statutory criminal procedure. The theory of right to immediate trial had its genesis in former § 4549.17 Ohio Rev. Code, now

⁶⁵ "In addition to those motions to an affidavit or complaint specified in § 2937.04 Ohio Rev. Code (1965), motions to form, such as to strike or to require amendment of the affidavit or complaint, shall be offered, argued, and ruled upon before plea." Rule .11. Compare Rule 12(b), Federal Rules of Criminal Procedure, which contemplates that all technical defenses shall be raised by motion before trial but *after* plea.

⁶⁶ "There shall be no required order for the offering of motions, and where possible, all such motions shall be made at the same session of court or stated in writing in a single document to the end that successive motions will not be offered at successive appearances for the sake of delay." Rule .19.

⁶⁷ The Federal Rules of Criminal Procedure similarly lack an express non-waiver provision and are as express in their requirement of consolidation of motions as are the Ohio ones. See Rule 12(b)2.

repealed.⁶⁸ Under that section a traffic offender was entitled to an immediate hearing upon arrest as a pre-condition to an easier setting of bail by the arresting officer. Much later the American Bar Association Traffic Court Program developed the "officer's-day-in-court" device, an arrangement which operated at cross purposes with the statute.⁶⁹ Under this device, the convenience of the officer, who might otherwise be compelled to be in court on cases at various irregular times, was considered, and the individual traffic defendants, instead of being rushed into court for immediate trial, were cited to appear at a specific hour of a specific day, on which all of that particular officer's cases were heard by the court. Implicit in this arrangement was the thought that if a defendant pleaded not guilty, he was to be tried immediately, without advance information to (or case preparation by) the prosecutor. As a result both the arresting officer and the defendant had to have their witnesses ready for trial and in court, notwithstanding that the defendant might, by pleading guilty, dispense with the need for witnesses. On the other hand, if witnesses were not present and the defendant elected to go to trial, the trial would have to be based on hearsay. Perceiving these objectionable features—the unused witnesses, the waiting by unarraigned defendants for trials to proceed, and the dangers of trial by hearsay—the legislature, in its 1959 amendments to the Criminal Procedure Act, eliminated both the right to immediate trial and trial on the Officer's Day in Court. It accomplished the former by repealing § 4549.17 Ohio Rev. Code,⁷⁰ and the latter by inserting a provision in new § 2937.08, making trial on the day of arraignment available only if both the prosecutor and the defendant expressly consent.

Recognizing that in order to obtain a reasonably just trial it was necessary to postpone the proceedings to a time after arraignment, and that requiring a defendant to appear twice in order to

⁶⁸ 128 Ohio Laws 97. Repeal was occasioned only partly by the fact that this section was in conflict with new section 2937.08 Ohio Rev. Code, enacted by the same act. It was an example of the then current practice of "hiding away" criminal trial provisions in various unrelated titles and chapters of the Code. §§ 4549.14 and 4549.16 pertaining to competency to testify remain buried in Title 45 of the Code, and provision for bills of exception in criminal convictions before all magistrates, including municipal judges, is governed by § 1901.21 in a chapter of the Code relating to civil hearings before county judges.

⁶⁹ See J. Economos, *Judge and Prosecutor in Traffic Court* 54 (1951). The idea is developed from G. Warren, *Traffic Courts* 40-41 (1942).

⁷⁰ See n. 62, *supra*.

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get a fair trial operated to defeat such purpose, many municipal courts had devised an arrangement whereby the defendant intending to plead *not guilty* could be excused from arraignment and allowed to file his plea by mail. New rule .17(e) validates this practice. Unfortunately both rule .17(e) and rule .10 in their language emphasize that immediate trial may be available,⁷¹ forgetting that immediate trial is a consensual arrangement, not contingent merely on the availability of the court. Thus the two rules may have the effect of encouraging courts to pressure defendants into having an immediate trial when this is in the court's or officer's interest, but not necessarily in the defendant's interest.

New Procedures

There are remarkably few new procedures not contemplated by the 1959 procedure act amendments. In view of the fact that the 14th amendment exclusionary rules, including *Mapp* and *Beck* and the right-to-counsel rules, including *Gideon*,⁷² *Escobedo*,⁷³ and *Miranda*⁷⁴ all were announced after the adoption of Ohio's 1959 Criminal Procedure Act amendments, it might have seemed logical to provide by rule that which the legislature had conspicuously failed to provide by statute: appointment of counsel for the indigent at the magistrate court level and right of counsel at the station house. But either wisely or unwisely, and certainly conducive to their approval by a court not predisposed to civil libertarianism,⁷⁵ the new rules totally ignore the problems of appointed counsel and the exclusionary rule.

This is not too surprising, considering that although the provisions of § 2937.46 did not expressly limit the rules to traffic misdemeanor procedures, those were stated to be their primary purpose, and the draftsmen (judging from the title assigned to the rules as proposed) considered themselves as so limited. The extension of the *Gideon* and *Miranda* rules to traffic misdemeanors appears to be barred by the decision of the Supreme

⁷¹ Rule .17(e) recites "Except where arraignment and immediate trial are available, the court . . . may provide. . . ." Rule .10: ". . . Immediate trial following or contemporaneously with arraignment is permissible as provided in Section 2937.08, Revised Code."

⁷² 372 U.S. 335, 83 S. Ct. 792 (1963).

⁷³ 378 U.S. 478, 84 S. Ct. 1758 (1964).

⁷⁴ 384 U.S. 436, 85 S. Ct. 1602 (1966).

⁷⁵ See n. 32-37, *supra*.

Court in *Toledo v. Dietz*,⁷⁶ and by Court of Appeals decisions in *Columbus v. Hayes*⁷⁷ and *Toledo v. Frazier*;⁷⁸ and the application of the *Griffin* rule to traffic misdemeanors has at least been seriously questioned in *State v. Stanton*.⁷⁹ Considering the current of Ohio decisions, indulging in the civil libertarianism of extension of the exclusionary rules would likely have been an exercise in drafting futility.

At the other end of the scale, efforts of traffic safety enthusiasts to reinsert provision for immediate trial at time of arraignment were checked,⁸⁰ although it remains to be seen whether or not either police officers or defense counsel will impose on witnesses' time by requiring them to be present at arraignment, in the hopes that their adversaries of the moment will accommodate them by consenting to trial and that the Court will actually have time to hear the case then.

In one comparatively minor respect the rules do clarify and implement a statutory provision which, in its original drafting, was somewhat ambiguous. In dealing with mayors' courts and, at the time of drafting, with county courts⁸¹ the procedure act amendments recognized the twin evils of conducting jury trials by non-lawyer mayors and county judges and of burdening the grand jury and common pleas court by binding over minor traffic misdemeanors.⁸² As a result the device of direct certification of jury trial cases to "a court of record" of the mayor's or county judge's selection was developed.⁸³ Unfortunately the statute provided for only one method of bail, the old fashioned recognizance, and it was not made clear that the transfer device was appro-

⁷⁶ 3 Ohio St. 2d 30, 209 N.E.2d 127 (1965).

⁷⁷ 9 Ohio App. 2d 38, 220 N.E.2d 829 (1964).

⁷⁸ 10 Ohio App. 2d 51, 226 N.E.2d 777 (1967).

⁷⁹ 12 Ohio App. 2d 99 (1968). Both the *Stanton* case and *City of Westerville v. Cunningham*, 12 Ohio App. 2d 34 (1968), with which it is in conflict, have been certified to the Supreme Court of Ohio for ultimate decision.

⁸⁰ See n. 65, *supra*.

⁸¹ Until 1963 County Courts were considered courts not of record. See § 1907.012 Ohio Rev. Code.

⁸² Prior to 1960 entry of plea of not guilty where imprisonment might be part of the penalty required a county judge, in the absence of jury waiver, to bind a misdemeanor defendant over to the grand jury. Former § 2937.10; *State v. Haycock*, 103 Ohio App. 183, 144 N.E.2d 390 (1957); *State v. Schaeffer*, 66 Ohio Law Abs. 283, 116 N.E.2d 467 (1953). Draftsman's notes for the amendments taking effect in 1960 described this as "running speeding and right of way cases through the grand jury at great bother and little gain." 31 Ohio Bar 417, 433, May 12, 1958.

⁸³ § 2937.08 Ohio Rev. Code (1965).

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priate only in jury eligible cases. A practice developed in some areas of mayors electing to transfer *all* contested cases, whether jury eligible or not, to the most convenient municipal court, carefully taxing all mayor's court costs and certifying them in the transfer.

This practice of overindulgence of transfer may have had real value in securing adequate hearing and consistent interpretation of legal principles in the case of particular defendants, and perhaps any device which partially protects the public from subjection to untrained administrators of justice should be applauded; but maintaining the device of transferring only contested cases would have had the effect of enabling mayors to perpetuate the institution of mayor's court. Requiring them, if they maintain their courts at all, to apply technical rules of evidence and to rule on trial motions impels them to consent to the abolition of the mayor's court as an institution. In addition, the overindulgence in certification was enabling municipal corporations to profit from sums mulcted as costs which bore no real relation to the costs of operation of their courts. The uniform rules⁸⁴ not only spell out, again, the limitation of the transfer device to jury eligible cases, but specify the mechanics of the certification, including a listing of the documents to be forwarded, and indicate in detail the actions to be taken by the receiving court when the certification is made to it. Specific authority is granted to transmit to the receiving court any bail received, regardless of the form in which it is acquired.⁸⁵

Ticket Issuance and Disposition

Perhaps the most extensive changes made by the rules relate not to the form of the ticket, but to conduct in relation to it by officers and court personnel. Much advance publicity for the ticket has emphasized its "No Fix" nature, which is something of a misnomer. There is basically no ticket which cannot be "fixed," granted the determination to do so and the willingness of a varying number of officials through whose hands it must flow to accommodate themselves to the fix. The "No Fix" label springs from two basic assumptions: first, that the court issues all quadruplicate tickets with serial numbering to all police agen-

⁸⁴ Rule .20.

⁸⁵ "... motions and docket entries together with bail, if any, shall be transmitted to the transferee court selected by the magistrate. . . ." Rule .20.

cies, and that the tickets must ultimately come back to the issuing court filled out as an affidavit; and second, that the courts have both the means and the will to check back, ascertain what tickets have been returned, and require accounting for those which have not. In large metropolitan communities with a single court the first of these assumptions could be basically correct, if the courts themselves issue the tickets. In practice, however, any authority courts may have had to impose issuance and audit controls on traffic tickets has long since been delegated to police departments, and the rules, as adopted, make it convenient for the courts to continue to delegate such authority.⁸⁶ In the less populous communities the individual courts not only deal with many different enforcement agencies, but the same enforcement agency may deal with many different courts.⁸⁷ While the rules provide in such situations for issuance to all agencies by a single one of the courts,⁸⁸ and for acceptability of that ticket in any court,⁸⁹ to maximize convenience in administration and police use, this interchangeability of the ticket impairs the ability to follow up on audit procedures.

The validity of the second basic assumption is also doubtful. The tendency of courts in the past to delegate the issuance function (and with it the audit controls) to police departments augurs ill for any great willingness of the courts to accept these responsibilities now. Issuance and accountability are likely to remain in police departments in metropolitan communities, and to gravitate to them even in the smaller ones.

⁸⁶ Rule 14: (c) Issuance. "The judge of each court exercising jurisdiction in traffic cases, and in multiple-judge courts, the Chief Justice or Presiding Judge thereof, subject to § 1901.15 Ohio Revised Code, shall designate the issuing authority for traffic tickets, which may be the clerk of the court, the violations referee, or the enforcement agency of the municipality. . . ."

⁸⁷ In county-wide municipal courts, city and village policemen from as many as eight or ten communities may from time to time file traffic cases, as may the sheriff's department, the Highway Patrol, and the Ohio Patrol, Turnpike unit. Similarly the Sheriff's Department and the Highway patrol unit in Hamilton, Summit, and Stark counties might each have from three to ten different courts in which to file their charges, dependent entirely on where the arrest was made.

⁸⁸ "When a single enforcement agency (other than the State Highway Patrol) regularly has cases in more than one court, the ticket used by such agency shall be issued through, and be accountable to, the court for adults in the most populous area in its jurisdiction issuing the Ohio Uniform Traffic Ticket. . . ." Rule 14(c).

⁸⁹ ". . . Any Ohio Uniform Traffic Ticket properly issued to a peace officer may be used and shall be accepted for filing and disposition in any court inferior to the court of Common Pleas having jurisdiction over the offense alleged. . . ." Rule 14(b).

It seems probable that in those police departments where accountability controls have been imposed in the past the new ticket will make control more difficult and expensive. In many departments the ticket was, in effect, a punched card base with matching punched card retained at the issuing office. It became a comparatively simple mechanical operation of sorting and matching to account for the tickets as they were returned.⁹⁰ In this particular aspect the punched card ticket was actually an accountability device superior to the present quadruplicate paper series, although other defects of the punched card (as a notice to the violator and as a charging document) compelled its elimination.⁹¹ Shifting to the "No Fix" ticket necessitates either a hand-sorting operation or an additional key-punched series of control cards, either of which will make the accountability function slower and more costly, whoever assumes the burden of its operation.

For the individual traffic officer, use of the uniform, single-writing, multiple-use ticket represents a clear gain in time. In many communities he formerly wrote out, on the street, a form of citation to the violator which varied from community to community in understandability to the recipient. At the end of his shift—if he remembered to do so, he went to police headquarters, to the court clerk's office, or both to type, sign, and swear to a plain form affidavit and a varying number of departmental supplemental information forms. Some departments made the officer do his own typing, not only on the affidavit, but on the police records forms, thereby making him an unpaid clerk-typist for the record room—a function not too efficiently discharged. Even in those communities in which the punched card system was in effect, the court affidavit had to be retyped in plain form if the charge was contested, or even if it went to court, rather than to the violations bureau. Apart from the opportunity to change the nature of the charge between the time of the citation and that of the court appearance, a wide opportunity for miscopying of name, transposition of operator's license number, and the making of

⁹⁰ The punch-card tickets issued to the various officers were actually partly pre-punched, with the officer's badge number representing a series of punches. Matching them against the master control card through a sorter and noting return was no problem.

⁹¹ Unfortunately the key punches frequently obliterated vital wording on the affidavit portion of the ticket; hence the punch card affidavit ticket was of limited value to the court, and frequently misunderstood by the defendant.

other copying errors existed, and court typing of disposition records going ultimately to the bureau of motor vehicles afforded occasion for additional copying errors. Under the new system, not only can the defendant be reasonably assured that the charge to which he answers will be the same one given to him on the street by the officer, but the driver licensing authority will have fewer errors in nomenclature and serial numbering to cope with, and will be able to fix responsibility on the officer for those mistakes which do occur. In addition, the traffic judge can more readily assume that the charge he is dealing with on the bench is the same charge which was given the defendant before him by the officer, and that the defendant has had ample opportunity to study the same and obtain legal advice if he chooses.

At the judicial level administration will be drastically simplified. The mere filing, with the affidavit copy of the ticket, of a partly completed report of conviction on the same size paper will not only eliminate much needless copying of information by the clerical staff, but eliminate one whole set of odd-sized papers which must be stocked, sorted, and eventually filed. Added to these comparatively minor and mechanical gains, however, is a revision of thinking on what sorts of judicial tasks may properly be delegated by traffic court judges.

As traffic accidents have increased and as police departments have grown in size and efficiency, points of contact between police agencies and offenders have grown at an enormous rate. Judicial manpower, while increasing, has had to be devoted increasingly to the civil side of an expanding docket⁹² and has not been able to keep pace with the increase of traffic citations filed. As a result, both in Ohio and elsewhere the use of the waiver, accompanied by tender of a fixed fine, has developed. This device which, wisely or unwisely, avoids confrontation between traffic defendant and traffic judge has, in most metropolitan communities, been institutionalized in the so-called Traffic Violations Bureau under supervision of the judges. Here pre-set fines with written pleas of guilty are accepted and processed by the clerical personnel of the court. Even the American Bar Association's Traffic Court Program, which prefers the confrontation device, is forced, somewhat reluctantly, to accept the violations bureau. Some communities and courts have felt themselves forced to use the device in an astonishingly large number of traffic violations

⁹² Whether it has had to be is debatable. That it has been is unquestioned.

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in which hazard is quite apparent, and even citations resulting from traffic accidents⁹³ are there processed on a wide scale.

The problem facing the Supreme Court in attempting to cope with excessive use of violations bureaus was two-fold: how to assure that the really problem driver was brought into court without completely inundating some traffic judges, and how to avoid impelling the operator of a car involved in a traffic accident to enter a plea of guilty before a clerk, which plea would subsequently become a stipulation of civil liability. The answer suggested by the rules is two-pronged. First: a drastic limitation is imposed on those violations which may be processed through the violations bureau, most notable of which are the accident-resulting violations,⁹⁴ transgressions of second offenders,⁹⁵ excessive speeding,⁹⁶ and the "unusual circumstance" cases⁹⁷ in which the police officer is given discretion to require court appearance.

Without more, such limitations would probably impose an impossible load of three hundred or more cases per day on a single traffic judge.⁹⁸ As relief the rules propose (by suggestion and not by requirement) that the traffic judges, where they are unable to obtain assignment of more judges to the traffic bench, resort to a trained referee system, already considerably in vogue in the juvenile courts. Professional qualification for the referees is required;⁹⁹ a minimum daily number of cases in court is re-

⁹³ The incidence of violations bureau-processable and processed accidents in Columbus Municipal Court was a matter of concern to the Ohio State Automobile Association, and at one time during early drafts of the rules it was provided that the violations referee could accept and pass upon no contest pleas.

⁹⁴ Rule .18(b)2.

⁹⁵ Rule .18(b)9.

⁹⁶ Rule .18(b)8. Ironically, the rule is phrased in terms of "exceeding the speed limit by more than fifteen miles per hour," a difficult definition to square with Ohio's 'reasonable and proper' speed law as expressed in § 4511.21 Ohio Rev. Code (1965). See n. 42, *supra*.

⁹⁷ Rule .18(b)10. The option given to the officer to make the decision of whether or not the offender should be required to go to court instead of to the violations bureau was much resisted, on the theory that this made the police officer too much of a judge. It was noted that the officer always has a much greater option: to cite or to overlook the violation in the first place.

⁹⁸ Actually judges have handled greater volumes than this, by having the offenders herded into a slowly-moving line with no opportunity to do more than hear a one-word statement of the charge, plead guilty, and pay a standardized fine. The superiority of such a system of justice to a violations bureau is debatable.

⁹⁹ Each referee must have the professional qualifications for a municipal judge. Rule .18(f). Five years of active practice of law as a principal occupation is required. § 1901.06 Ohio Rev. Code (1965).

quired as a prerequisite to their use;¹⁰⁰ and stability of personnel is indicated.¹⁰¹ Without expressly so stating, it is implied that the no-contest plea in accident cases may be entertained and acted upon by the referee.¹⁰² In addition, the power of case-by-case review and confirmation of sentence by the traffic judge is retained.¹⁰³ The major limitation on the use of referees is still, of course, the willingness of the municipalities to provide funds and hearing rooms to make the system effective. In addition, the use of referees in the actual trial of contested cases is provided for on a voluntary basis, subject to a demonstrated need as shown by the volume of contested cases.

Whether the shift in emphasis from clerical help to legally trained referees will be effective in solving the problems caused by having too many serious offenses for available judicial manpower depends on whether local judges are sufficiently alert to recognize the virtues of the system, sufficiently broadminded to delegate some of their power and responsibility, and sufficiently forceful to convince municipal and county appropriating authorities that the problem justifies the additional expenditure required. The fact that the Ohio legislature is conscious enough of the referee technique to authorize and recommend its use in minor civil cases¹⁰⁴ should, however, help to sell this feature of the rules to the judges and their fiscal controllers.

Conclusion

Whether the new rules, including mandated use of the uniform traffic ticket, make any real impact on the Ohio traffic courts and police agencies will be largely dependent on whether effective use is made of an institution which the Ohio Court has pio-

¹⁰⁰ Seventy-five persons appearing for pleas per judge per day. Rule .18(f). This figure was admittedly plucked from the air as permitting an average of twelve minutes per case during a six-hour bench day. Many guilty plea dispositions take less than half that time, even in uncrowded rural courts.

¹⁰¹ There is no precise standard set. Provision for "reasonably long term appointments" is required. Rule .18(f).

¹⁰² Two types of referees are indicated by the rules: A violations referee, so-called because of the use of the term in § 2937.46, who is really a clerk and may be any suitable person. Rule .18(a). As such, he is limited to receiving guilty pleas. The referee described in Rule .18(f) is really an adjudication referee, who receives pleas generally and may recommend findings and sentencing for confirmation by the judge.

¹⁰³ Rule .18(f).

¹⁰⁴ A small-claims referee is provided for by Chapter 1925 Ohio Rev. Code (1965), which creates a small-claims division in each municipal and county court. 133 Ohio Laws H 475, effective November 21, 1967.

neered in devising. This is the Review Commission, which the rules provide for¹⁰⁵ and whose personnel has already been selected and announced.¹⁰⁶ Undoubtedly, even with seven years of gestation and refinement there are "bugs" in the institution, some of them (such as accountability¹⁰⁷) foreseen, and others unanticipated. It seems likely that there will be recalcitrant or unperceptive judges among those charged with applying the rules. To make them work some salesmanship will be needed and possibly some evidence of will to resort to the ultimate remedy of contempt to compel application. In addition, some willingness to make interpretation and to stretch the letter of the rules to apply their spirit, as well as readiness to receive complaints and suggestions for change of unworkable provisions, is needed. In this respect the new Commission has a heavier burden than might be expected, since the Supreme Court chose not to retain the bulk of the group of draftsmen who had lived with and debated the various drafts of the rules as ultimately adopted. Instead entirely new personnel, except for the chairman, were selected. Whether the virtue of acquiring a fresh point of view on the Review Commission outweighs the loss of experience remains to be seen.

¹⁰⁵ Rule .22.

¹⁰⁶ 40 *Ohio Bar* 1502 (December 18, 1967).

¹⁰⁷ See *Ticket Issuance and Disposition*, pp. 19-21, *supra*.